

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Clifford F. Sharp et al.

Application No.: 10/078,386

Confirmation No.: 5842

Filed: February 20, 2002

Art Unit: 2134

For: SYSTEM AND METHOD FOR DETECTING
AND ELIMINATING IP SPOOFING IN A
DATA TRANSMISSION NETWORK

Examiner: D. Y. Jung

APPEAL BRIEF

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

As required under 37 C.F.R. § 41.37(a), this brief is filed within two months of the Notice of Appeal filed in this case on October 11, 2007, and is in furtherance of said Notice of Appeal.

The fees required under 37 C.F.R. § 41.20(b)(2) are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.

This brief contains items under the following headings as required by 37 C.F.R. § 41.37 and M.P.E.P. § 1206:

- I. Real Party In Interest
- II. Related Appeals and Interferences
- III. Status of Claims
- IV. Status of Amendments
- V. Summary of Claimed Subject Matter
- VI. Grounds of Rejection to be Reviewed on Appeal
- VII. Argument
- VIII. Claims Appendix

- IX. Evidence Appendix
- X. Related Proceedings Appendix

I. REAL PARTY IN INTEREST

The real party in interest for this appeal is:

Deep Nines, Inc.

II. RELATED APPEALS, INTERFERENCES, AND JUDICIAL PROCEEDINGS

Interference No. 105,271 was declared November 15, 2004 in parent application no. 09/572,112, filed May 17, 2000 (issued as US 7,058,976 on June 6, 2006). Judgment in favor of the Appellant was issued on March 24, 2005 by the Board of Patent Appeals and Interferences. To Appellant's knowledge, there are no other appeals, interferences, or judicial proceedings which will directly affect or be affected by or have a bearing on the Board's decision in this appeal.

III. STATUS OF CLAIMS

A. Total Number of Claims in Application

There are 10 claims pending in application.

B. Current Status of Claims

1. Claims canceled: None
2. Claims withdrawn from consideration but not canceled: 1-11, 22-25. However, the Final Office Action erroneously states that all claims except 12-21 are canceled. *See* Final Action at 2.
3. Claims pending: 12-21
4. Claims allowed: None
5. Claims rejected: 12-21

C. Claims On Appeal

The claims on appeal are claims 12-21.

IV. STATUS OF AMENDMENTS

Appellant did not file an Amendment After Final Rejection.

V. SUMMARY OF CLAIMED SUBJECT MATTER

A concise explanation of the subject matter defined in each of the claims separately argued in this appeal, which refers to the specification and to the drawings by reference characters, is provided below. All references to the specification and drawings are made by way of example for the convenience of the Board, as it is possible that other areas of the specification and drawings may contain further descriptive material. No limitations on the meaning of the following claim language is intended.

According to the embodiment of claim 12, a method for controlling a traffic management system includes reviewing certain parameters of data packets flowing into the system (e.g., [0034], 901 of FIGURE 9, 1001 of FIGURE 10, and 1101 of FIGURE 11). The parameters pertain to possible spoofing (e.g., the description of FIGURE 9 at paragraphs [0050] and [0051] assist in explaining how address data relates to spoofing; the description of FIGURE 10 at paragraphs [0052] through [0054] assist in explaining how hardware/software address and timestamp data relates to spoofing; and the description of FIGURE 11 at

paragraphs [0055] and [0055] assist in explaining how sequence number data relates to spoofing). The method also includes remembering for a period of time the reviewed certain parameters in conjunction with each received data packet (e.g., 19 of FIGURE 1, 905 of FIGURE 9, 1005 of FIGURE 10, and 1104 of FIGURE 11 and [0034]). Further, upon attainment of packet flow volume into the system reaching a certain level, certain subsequently received packets are temporarily stored in accordance with selective remembered parameter of previously received packets (e.g., 309, 310, and 311 of FIGURE 3, [0037]-[0039], and [0057]-[0059]).

According to claim 13, the certain level of packet flow volume is user controlled (e.g., [0016]).

According to claim 14, the certain level of packet flow volume includes a plurality of levels, wherein the attainment of each successive level results in a more stringent application of the remembered certain parameters (e.g., [0015], [0039] and 306-311 of FIGURE 3).

According to claim 16, the certain level of packet flow volume includes a plurality of levels arranged in a sequence, and as the sequence of levels gets closer to an absolute maximum data flow rate more and more of the remembered parameters are included as a basis for said determination to temporarily store a particular packet (e.g., [0058] and 306-311 of FIGURE 3).

According to claim 17, the embodiment of claim 12 can further include arbitrarily selecting packets for temporary storing when the data flow rate reaches its maximum capacity (e.g., [0015] and 306-311 of FIGURE 3).

According to claim 18, the embodiment of claim 12 can further include retrieving the temporarily stored data packets when traffic flow into the system falls below the certain level of packet flow volume (e.g., [0039] and 310 of FIGURE 3).

According to claim 20, the embodiment of claim 12 can further include dynamically displaying information pertaining to the temporarily stored data packets (e.g., [0047] and [0048] and FIGURES 6 and 7).

According to claim 21, the displaying of the embodiment of claim 20 can further include transmitting said display information to a remote location (e.g., [0016] and FIGURES 6 and 7).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

First Ground—Claims 9, 10, 12-18, and 22-25 are rejected under 35 U.S.C. §102(b) as being anticipated by “IP Spoofing Demystified,” *Phrack* Magazine, Vol. 7, issue 48, file 14 of 18, June 1996 (hereinafter, *Phrack*).

Second Ground—Claims 11, 20, and 21 are rejected under 35 U.S.C. §103(a) as being obvious over *Phrack*.

Appellant notes that the Restriction Requirement mailed April 6, 2007 set out a four-way restriction, and Appellant chose to prosecute claims 12-21 (group II in the restriction). Thus, it is believed that claims 12-21 are the only claims in the application that are currently under rejection, despite the Final Action’s mention of claims 9-11 and 22-25 in the rejections. Accordingly, Appellant addresses only the rejections of claims 12-21 and reserves the right to refute the Examiner’s comments about any of the restricted claims.

VII. ARGUMENT

A. First Ground of Rejection

On pages 2-3 of the Office Action, claims 12-18 are rejected under 35 U.S.C. §102(b) as being anticipated by *Phrack*. Appellant traverses the rejection.

1. Claims 12, 15, and 19

To anticipate a claim under 35 U.S.C. § 102, a reference must teach every element of the claim. *See Verdegaal Bros. Inc. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). Moreover, in order for an applied reference to be anticipatory under 35 U.S.C. § 102 with respect to a claim, “[t]he identical invention must be shown in as complete detail as is contained in the . . . claim.” *See Richardson v. Suzuki Motor Co.*, 9 U.S.P.Q.2d 1913 (Fed. Cir. 1989). As discussed further below, these

requirements are not satisfied by the 35 U.S.C. § 102 rejection because *Phrack* does not teach every element of the claims.

For instance, *Phrack* does not teach “upon attainment of packet flow volume into said system reaching a certain level, temporarily storing certain subsequently received packets in accordance with selective remembered parameter of previously received packets,” as recited, in part, by claim 12 because *Phrack* does not teach storing packets “upon attainment of packet flow volume into said system reaching a certain level.” A short tutorial on *Phrack* is instructive.

Phrack appears to be a magazine article that describes a particular type of “IP-spoofing” in Unix. *See, e.g., Phrack* at title. According to *Phrack*, the typical IP spoofing attack occurs as follows. There are three computers—the attacking host, a target host (gets attacked), and the trusted host. *Id.* at 1. The trusted host and the target host have a pattern of trust and communicate in a trusted fashion, such that the target host accepts communications from the trusted host by IP address-based authentication. *Id.* at 4. The attacker discovers the pattern of trust and begins a process to assume the identity of the trusted host to “subvert the security of the target host.” *Id.* at 4-5. Specifically, the attacker begins a Denial of Service (DOS) attack upon the trusted host in order to keep the trusted host tied up while the spoofing is performed. *Id.* at 5-6. Keeping the trusted host tied up is important if the spoofing is to be successful, since the trusted host will cause the communication to reset if it receives SYN/ACKs sent from the target once the spoofing begins:

[T]he attacker does not want any host to receive the SYN/ACKs that will be coming from the target TCP (this would result in a RST being sent to the target TCP, which would foil our attack.) (*Id.* at 6)

While the trusted source is disabled by the DOS attack, the attacker sends packets to the target host that appear to be from the trusted host. *Id.* at 4. If the attacker successfully compromises the target host, then the attacker can send communications to the target host that cause the target host to open up another means of access (i.e., a “backdoor”), thereby allowing a direct attack into the target. *Id.* at 4 and 7.

It appears that *Phrack* has only a very brief discussion of packet flow volume at pages 5-6 in the portion entitled, “Trusted Host Disabling Using the Flood of Sins.” Specifically, it

is the unmanageable volume of packets in the DOS attack that causes the trusted host to be unavailable. *Id.* at 5. *Phrack* states that if “this backlog limit is reached, TCP will silently discard all incoming SYN requests until the pending connections can be dealt with.”

By contrast claim 12 recites, in part, “upon attainment of packet flow volume into said system reaching a certain level, temporarily storing certain subsequently received packets.” *Phrack* does not teach this feature of claim 12. Instead, *Phrack* appears to teach discarding SYN requests if a backlog limit is reached. Accordingly, *Phrack* does not teach the above-quoted feature of claim 12.

The Examiner focuses attention on the trusted source by stating in the Response to Arguments section of the Final Action:

Furthermore, as IP spoofing is usually part of a denial of service attack, some threshold handling must occur as part of the defense. Thus, the system must look for “reaching a certain level.” (Final Action at 2-3).

In other words, the Examiner acknowledges that *Phrack* does not teach the above-recited feature of claim 12 and tries to correct the deficiency by asserting that “threshold handling must occur as part of the defense.” Such assertion is incorrect, as it diverges from the actual teachings in *Phrack* and simply attempts to add subject matter to *Phrack*. A reading of *Phrack* at pages 5-6 shows that no defense to the DOS attack is taught, much less a “threshold handling defense.” Instead, it is even more instructive to note that in the example in *Phrack*, the trusted host that is flooded with SYN messages during the DOS attack must be disabled for the spoofing to occur. *See Phrack* at 6. In other words, for *Phrack*’s spoofing example to work, no effective defense to the DOS flooding of the trusted host can be present. Thus, not only is the Examiner’s assertion regarding threshold handing simply an attempt to add something to *Phrack* that is not there, but it also seems to be contradicted by *Phrack*, itself.

Furthermore, the Examiner vigorously asserts that “temporarily storing certain subsequently received packets” is taught by *Phrack* in the packet filtering discussion on page 8. *See* Final Action at 2. It should be noted that such assertion by the Examiner confuses the issues of 1) the DOS attack upon the trusted host and 2) the spoofing attack upon the target host, since packet flow volume is only relevant to the DOS attack, whereas packet filtering is

only relevant to the spoofing attack. Nevertheless, such assertion fails to show that the above-recited feature of claim 12 is taught. Specifically, the feature of claim 12 recites that “temporarily storing certain subsequently received packets” is performed “upon attainment of packet flow volume into said system reaching a certain level.” Not one of the spoofing defenses described in *Phrack* on page 8 includes performing any action “upon attainment of packet flow volume into said system reaching a certain level.” For these reasons, it is believed that *Phrack* does not teach “upon attainment of packet flow volume into said system reaching a certain level, temporarily storing certain subsequently received packets in accordance with selective remembered parameter of previously received packets,” as recited by claim 12.

Note on inherency

On page 4 of the Final Action, the Examiner states:

Regarding claims 10, 12-18, see pages 8-9. These pages show that the details of keeping track of the network as in these claims are inherent to the situation noted in pages 8-9.

Appellant respectfully notes that not one of claims 12-18 recites, “keeping track of the network.” Thus, it is believed that this comment is simply inapplicable to the claims at issue.

Additionally, the rejection has failed to “provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.” *See* M.P.E.P. §2112(IV), citing *Ex Parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat App. & Inter. 1990). In other words, it is not enough to allege that something is present in a reference—there must be reasoning that shows that it must be in the reference. The Examiner, however, merely asserts that “keeping track of the network” is inherent because pages 8-9 of *Phrack* “show” it. No reasoning or evidence is provided. Furthermore, *arguendo*, even if the Examiner could show that “keeping track of the network” is inherent, the Examiner still does not explain how “keeping track of the network” teaches any claimed features from claims 12-18. By contrast, Appellant has offered reasoning as to why the above-recited feature of claim 12 is not present in *Phrack*. Thus, it is believed that *Phrack* does not teach at least the above-recited feature of claim 12 either explicitly or inherently.

Dependent claims 15 and 19 each depend either directly or indirectly from independent claim 12 and, thus, inherit all of the limitations of independent claim 12. Thus, *Phrack* does not teach all claim limitations of claims 15 and 19. It is respectfully submitted that dependent claims 15 and 19 are allowable at least because of their dependence from claim 12 for the reasons discussed above. Accordingly, Appellant respectfully requests the withdrawal of the 35 U.S.C. § 102 rejection of claims 12, 15, and 19.

2. Claim 13

Claim 13 recites, in part, “said certain level is user controlled.” Such feature is not taught by *Phrack*. As explained above, it appears that the Examiner relies on the discussion of SYN requests sent to the trusted host to teach the claimed “packet flow volume into said system reaching a certain level.” *See* Final Action at 3 and *Phrack* at 5-6. However, *Phrack* does not teach any level of packet flow volume is “user controlled.” Such teaching is absent from *Phrack*, and there is no reasoning provided by the Examiner to show that such feature is inherent. Accordingly, reversal of the rejection of claim 13 is respectfully requested.

3. Claim 14

Claim 14 recites, in part, “said certain level includes a plurality of levels, wherein the attainment of each successive level results in a more stringent application of said remembered certain parameters.” *Phrack* does not teach any level of packet flow volume “includes a plurality of levels.” Nor does *Phrack* teach that “the attainment of each successive level results in a more stringent application of said remembered certain parameters.” Such teaching is absent from *Phrack*, and there is no reasoning provided by the Examiner to show that such feature is inherent. Accordingly, reversal of the rejection of claim 14 is respectfully requested.

4. Claim 16

Claim 16 recites, in part, “said certain level includes a plurality of levels arranged in a sequence, and wherein as the sequence of levels gets closer to an absolute maximum data flow rate more and more of said remembered parameters are included as a basis for said determination to temporarily store a particular packet.” *Phrack* does not teach these features of claim 16 for a variety of reasons. For instance, *Phrack* does not appear to teach a plurality

of levels of packet flow volume arranged in a sequence. Nor does *Phrack* appear to teach “as the sequence of levels gets closer to an absolute maximum data flow rate more and more of said remembered parameters are included as a basis for said determination to temporarily store a particular packet.” In fact, the relevance of *Phrack* to claim 16 is not apparent to Appellant. Accordingly, reversal of the rejection of claim 16 is respectfully requested.

5. Claim 17

Claim 17 recites, in part, “arbitrarily selecting packets for temporary storing when said data flow rate reaches its maximum capacity.” Appellant sees nothing in the cited portions of *Phrack* that teaches, or even mentions arbitrarily selecting packets for temporary storing. Accordingly, the relevance of *Phrack* to this feature is not clear. Furthermore, Appellant sees nothing in the cited portions that teaches or mentions storing when data flow reaches a maximum capacity. It should be noted, though, that *Phrack* states that SYN requests are discarded if a backlog limit is reached, thereby seeming to teach away from temporarily storing when data flow reaches a maximum capacity. *See Phrack* at 5. Accordingly, reversal of the rejection of claim 17 is respectfully requested.

6. Claim 18

Claim 18 recites, in part, “retrieving said temporarily stored data packets when traffic flow into said system falls below said certain level.” *Phrack* does not appear to even address a scenario wherein “traffic flow into said system falls below said certain level.” Thus, it is believed that *Phrack* does not teach the above-recited feature of claim 18. Accordingly, reversal of the rejection of claim 18 is respectfully requested.

B. Second Ground of Rejection

Claims 20 and 21 are rejected under 35 U.S.C. §103(a) as being obvious over *Phrack*. Appellant traverses the rejection.

Dependent claims 20 and 21 depend from claim 12 and inherit all of the features of claim 12. As shown above, not all features of claim 12 are taught by *Phrack*, and the Examiner does not cure the deficiencies of the rejection of claim 12 in the 35 U.S.C. §103(a)

rejection of claims 20 and 21. Thus, it is respectfully asserted that claims 20 and 21 are patentable at least because of their dependence from claim 12.

Additionally, claims 20 and 21 individually recite features that are patentable. For instance, claim 20 recites, “dynamically displaying information pertaining to temporarily stored ones of said data packets.” Also, claim 21 recites, “said displaying step includes: transmitting said display information to a remote location.”

Appellant respectfully notes that the Examiner does not cite a reference to teach the individually-recited features in claims 20 and 21. The Examiner simply asserts that “*Phrack* does not teach the displaying as in these claims. Nevertheless, it would have been obvious to have such displaying for the motivation of easier control by the system handling person.” *See* Final Action at 4-5. In other words, the Examiner acknowledges that *Phrack* does not teach some aspects of the claim limitations but says that “displaying as in these claims” is obvious.

The test for non-obvious subject matter is whether the differences between the subject matter and the prior art are such that the claimed subject matter as a whole would have been obvious to a person having ordinary skill in the art to which the subject matter pertains. The United States Supreme Court in *Graham v. John Deere and Co.*, 383 U.S. 1 (1966) set forth the factual inquiries which must be considered in applying the statutory test: (1) determining of the scope and content of the prior art; (2) ascertaining the differences between the prior art and the claims at issue; and (3) resolving the level of ordinary skill in the pertinent art. Further, the prior art cited must teach or suggest all of the claim limitations. *See* M.P.E.P. §2143, citing *In re Royka*, 490 F.2d 981, 180 USPQ 580, 583 (CCPA 1974). The rejection fails for two reasons.

First, the Examiner does not perform the prescribed *Graham* factual analysis for any claimed features. The Examiner merely makes the blanket statement that “it would have been obvious to have such displaying...” The Examiner does not acknowledge that claims 20 and 21 recite more than just “displaying,” and those features are not properly dismissed by the blanket statement. In the Examiner’s casual dismissal of the features of claims 20 and 21, the Examiner fails, at least, to ascertain the differences between the prior art and the claims at issue, which is required by *Graham*.

Second, the cited art does not teach or suggest all claimed limitations, as required by *Royka*. For instance, the Examiner does not cite a second reference to teach or suggest the material acknowledged not to be in *Phrack*. Nor does the Examiner use Official Notice to assert that such features are well-known. (It should also be noted that even if the rejection intends such statement to be Official Notice, the statement does not comply with the requirements of Official Notice found in M.P.E.P. §2144.03). Thus, such features are not shown to be present in any of the applied art. For at least these reasons, it is believed that claims 20 and 21 are patentable over the 35 U.S.C. §103(a) rejection over *Phrack*.

VIII. CLAIMS APPENDIX

A copy of the claims involved in the present appeal is attached hereto as Appendix A.

IX. EVIDENCE APPENDIX

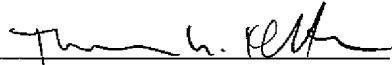
No evidence pursuant to §§ 1.130, 1.131, or 1.132 or entered by or relied upon by the examiner is being submitted.

X. RELATED PROCEEDINGS APPENDIX

A copy of the decision in Interference No. 105,271, decided March 24, 2005 is included herein.

Dated: December 10, 2007

Respectfully submitted,

By 
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APPENDIX A**Claims Involved in the Appeal of Application Serial No. 10/078,386:**

12. The method of controlling a traffic management system, said method comprising the steps of:

reviewing certain parameters of data packets flowing into said system, said parameters pertaining to possible spoofing;

remembering for a period of time said reviewed certain parameters in conjunction with each received data packet; and

upon attainment of packet flow volume into said system reaching a certain level, temporarily storing certain subsequently received packets in accordance with selective remembered parameter of previously received packets.

13. The method of claim 12 wherein said certain level is user controlled.

14. The method of claim 12 wherein said certain level includes a plurality of levels, wherein the attainment of each successive level results in a more stringent application of said remembered certain parameters.

15. The method of claim 12 wherein said remembered parameters include one or more of: a sender's software address; a sender's hardware address; a prior trouble causing address; a notice of a potential trouble address; amount of data transmitted from a particular address in a period of time; number of packets arriving from a particular address in a period of time; an address' domain name; date of initial encounter with an address; date of latest encounter with an address, a sequence number of a transaction; a time stamp of a transaction.

16. The method of claim 15 wherein said certain level includes a plurality of levels arranged in a sequence, and wherein as the sequence of levels gets closer to an absolute maximum data flow rate more and more of said remembered parameters are included as a basis for said determination to temporarily store a particular packet.

17. The method of claim 16 further including the step of:
arbitrarily selecting packets for temporary storing when said data flow rate reaches its maximum capacity.
18. The method of claim 12 further including the step of:
retrieving said temporarily stored data packets when traffic flow into said system falls below said certain level.
19. The method of claim 18 further including the step of:
putting at least some of said retrieved data packets through said system.
20. The method of claim 12 further comprising the step of:
dynamically displaying information pertaining to temporarily stored ones of said data packets.
21. The method of claim 20 wherein said displaying step includes:
transmitting said display information to a remote location.

APPENDIX B

None.

APPENDIX C

A copy of the decision in Interference No. 105,271, decided March 24, 2005 is included herein.

THIS DOCUMENT WAS NOT WRITTEN FOR PUBLICATION
AND IS NOT BINDING PRECEDENT OF THE BOARD

Filed by: Trial Section Merits Panel
Mail Stop INTERFERENCE
Board of Patent Appeals and Interferences
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, Virginia 22313-1450
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Paper No. 421
Filed:
24 March 2005

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

JAMES S. MAGDYCH, TARIK RAHMANOVIC,
JOHN R. McDONALD, BROCK E. TELLIER,
ANTHONY C. OSBORNE and NISHAD P. HERATH

Junior Party
(Patent 6,513,122)¹

FAXED

v.

MAR 24 2005

SUSAN PITTMAN DARK

Senior Party
(Application 09/572,112)²

PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Patent Interference No. 105,271

Before LEE, TORCZON and MEDLEY, Administrative Patent Judge.

LEE, Administrative Patent Judge.

Judgment – Bd. Rule 127(b)

Junior party Magdych has filed a paper conceding priority to senior party Dark (Paper No. 39). Senior party Dark has filed a paper withdrawing its Motions 1 and 2 alleging unpatentability of Magdych's claims corresponding to the count. What remains pending is junior party Magdych's Substitute Substantive Motion 1 alleging the unpatentability of senior party's claims.

¹ Based on Application 09/895,500, filed June 29, 2001. The real party in interest is Network Associates Technology, Inc.

² Filed May 17, 2000. The real party in interest is Deep Nines, Inc.

Interference No. 105,271
Magdych v. Dark

In connection with junior party's Motion 1, in a telephone conference call counsel for the parties have agreed to the administrative patent judge's suggestion to have it dismissed with an instruction to the senior party to bring it to the examiner's attention and to provide a copy of the motion together with all supporting evidence to the examiner immediately upon return of the junior party's application to the examiner after entry of judgment in this interference.

It is now time appropriate to enter judgment. Accordingly, it is

ORDERED that junior party Magdych's concession of priority is treated as a request for entry of adverse judgment and the request is granted;

FURTHER ORDERED that judgment as to the subject matter of the count is herein entered against junior party JAMES S. MAGDYCH, TARIK RAHMANOVIC, JOHN R. McDONALD, BROCK E. TELLIER, ANTHONY C. OSBORNE and NISHAD P. HERATH;

FURTHER ORDERED that the junior party JAMES S. MAGDYCH, TARIK RAHMANOVIC, JOHN R. McDONALD, BROCK E. TELLIER, ANTHONY C. OSBORNE and NISHAD P. HERATH is not entitled to claims 1-12 of its involved Patent No. 6,513,122, which correspond to Count 1;

FURTHER ORDERED that junior party's Substitute Substantive Motion 1 is herein dismissed because in light of the judgment on priority there is no need for the Board to consider in an interference proceeding what is purely a patentability issue that may be considered by the patent examiner;

FURTHER ORDERED that within twenty (20) days of the date of this judgment the senior party Dark shall (1) file a paper in its involved application to bring to the examiner's attention junior party's Substitute Substantive Motion 1, (2) provide to the examiner a copy of that motion together with all supporting Exhibits, and (3) ask the examiner to consider the prior art relied on in that motion;

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FURTHER ORDERED that if there is a settlement agreement, the parties should note the requirements of 35 U.S.C. § 135(c) and Bd. Rule 205;

FURTHER ORDERED that a copy of this judgment be filed in the respective involved application or patent of the parties.

March 24, 2005

Interference No. 105,271
Magdych v. Dark

By Facsimile:

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INTERFERENCE DIGEST

Interference No. 105,271

Paper No. 16

Name: Susan Pittman Dark

Serial No.: 09/572,112

Patent No.

Title: Intelligent feedback loop process control system

Filed: 05/17/00

Interference with Magdych et al.

DECISION ON MOTIONS

Administrative Patent Judge, _____ Dated, _____

FINAL DECISION

Board of Patent Appeals and Interferences, favorable Dated, 3.24.05

Court, _____ Dated, _____

REMARKS

This should be placed in each application or patent involved in interference in addition to the interference letters.